

No. 92-1213

Supreme Court, U.S.  
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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1992

VIRGINIA MILITARY INSTITUTE, *et al.*,  
*Petitioners*,  
v.

UNITED STATES OF AMERICA,  
*Respondent.*

**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Fourth Circuit**

**BRIEF AMICI CURIAE OF WELLS COLLEGE,  
RANDOLPH-MACON WOMAN'S COLLEGE,  
SWEET BRIAR COLLEGE, AND HOLLINS COLLEGE  
IN SUPPORT OF PETITIONERS**

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**INTEREST OF AMICI CURIAE**

Wells College, founded in 1868, is a private woman's college which is located in Aurora, New York. Randolph-Macon Woman's College, founded in 1891, is located in Lynchburg, Virginia. Sweet Briar College, located in Sweet Briar, Virginia, is a woman's college which was founded in 1901. Hollins College, founded in 1842, is a woman's college at the undergraduate level in Roanoke,

Virginia. For almost a century, they have provided high quality education for women. They believe in single-sex education as a beneficial alternative to coeducational education, in either a college or university setting. Wells, Randolph-Macon, Sweet Briar, and Hollins believe that they and other single-sex educational institutions provide needed diversity in American postsecondary education.

*Amici* submit this brief to underscore the great importance of single-sex education and to emphasize the benefit of granting the Petition for Certiorari in this case.<sup>1</sup>

#### **SUMMARY OF ARGUMENT**

Wells, Randolph-Macon, Sweet Briar, and Hollins have reaffirmed their mission as small private liberal arts colleges for women because they are convinced that single-sex education for women provides successful training for women. The Fourth Circuit Court of Appeals in this case has also acknowledged the benefit of single-sex education. Said the Fourth Circuit in this case:

Thus, while the data support a pedagogical justification for a single-sex education, they do not materially favor either sex. Both men *and* women appear to have benefited from single-sex education in a materially similar manner.

Pet. App. 16a (emphasis in original). Likewise, in *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982), this Court recognized the legal viability of single sex education. *Id.* at 728, 732 n.17.

Despite this Court's holding in *Mississippi University For Women*, however, several commentators seem to believe that public support of single-sex education is unconstitutional and that even a private institution will be unable to offer single-sex education if it receives federal

<sup>1</sup> Petitioners and respondent have consented to the filing of this brief. Copies of the parties' consent letters have been filed with the Clerk.

financial assistance, state aid or merely a state or federal tax exemption. Although the Second Circuit Court of Appeals (the Circuit in which Wells is located) has twice reaffirmed that such aid does not turn a private institution into a public one, *Albert v. Carovano*, 851 F.2d 561 (2d Cir. 1988); *Powe v. Miles*, 407 F.2d 73 (2d Cir. 1968), commentators seem to believe that a private institution, by accepting public benefits or largess, becomes subject to the same constitutional scrutiny as public institutions. Thus, argue these commentators, such institutions will be unable to offer single-sex education. *Amici* do not believe that this Court has made any such ruling, but they offer this brief in the belief that this Court should clear any doubt. This Court's decision in *Mississippi University for Women* and the District Court's findings in this case support the holdings there is a strong pedagogical justification for single-sex education.

#### **ARGUMENT**

##### **SINGLE SEX EDUCATION PROVIDES SUBSTANTIAL BENEFIT TO WOMEN**

As is amply demonstrated by the evidence considered by the District Court in this case, a large number of studies have confirmed the value and importance of single sex education. See, for example, Marvin Bressler & Peter Wendell, *The Sex Composition of Selective Colleges and Gender Differences in Career Aspirations*, 51 J. Higher Educ. 650, 662 (1980), cited by the Circuit Court's opinion. Pet. App. 16a.

The Circuit Court acknowledged the merit of the studies and the testimony supporting them.

We are thus left with three conclusions (1) single-gender education, and VMI's program in particular, is justified by a legitimate and relevant institutional mission which favors neither sex . . .

*Id.* at 899.

The popular press also has reported an increasing awareness of the value of single-sex education. See, e.g., *A 90's Resurgence for Women's Colleges*, USA Today, Feb. 16, 1993. Against such a background, this Court cannot allow a misinterpretation of its holding in *Mississippi University for Women v. Hogan, supra*. Instead, it should reaffirm the value of single-sex education, hold firmly and clearly that it has its place in the American higher education system, and rule once again that educationally successful institutions like the *amici* and the petitioner may constitutionally offer single-sex education.

#### **CONCLUSION**

For the foregoing reasons, the Court should grant the Petition for Certiorari, and allow the matter to be fully briefed and argued.

Respectfully submitted,

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